

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 928 of 2021 (S.B.)

Dilip S/o Haribhau Surwade,
Aged 55 years, Occ. Service,
R/o Sandesh Nagar, Washim Road,
Akola, Tq. & Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai-32.
- 2) The Superintendent of Police,
Akola, Dist. Akola.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 24th June,2022.

Date of Pronouncement of Judgment : 4th July,2022.

JUDGMENT

(Delivered on this 4th day of July, 2022)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant was working as a Police Constable. He was posted at Police Station City Kotwali, Akola. The applicant was promoted as a Naib Police Shipai and thereafter as a Hawaldar. On

23/12/2008, the applicant along with one API Shri Nagarkar were suspended for the offence punishable under the Prevention of Corruption Act. On 18/12/2010, charge sheet was filed against the applicant. Till date the charges are not framed against the applicant. On 18/3/2016, the suspension of the applicant was revoked by the respondent no.2. The applicant made representation on 8/3/2021 to regularise the suspension period. The applicant again made request, but his suspension period is not regularised, therefore, the O.A. is filed for following reliefs –

“(i) To quash and set aside the communication dated 6/8/2021 as illegal bad in law.

(ii) To hold and declare that the suspension period from 23/12/2008 to 18/03/2016 deducting 90 days should be treated as duty period for all the purposes ;

(iii) To direct the respondent no.2 to release all the consequential monetary benefit arising therefrom after regularizing the suspension period as per prayer clause (ii) ;

3. The O.A. is strongly objected by the respondents. It is submitted that the suspension period was revoked subject to the decision of criminal prosecution. The criminal prosecution is pending against the applicant. Hence, the applicant is not entitled for the relief claimed in this O.A.

4. Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents.

5. As per the Rule 72 of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981, it is discretion of the disciplinary / appointing authority to treat the suspension period as duty period. As per the Rule 72 of Rules,1981 it is for the authority to pass a specific order regarding the pay and allowances to be paid to the Govt. servant for the period of suspension. The relevant Rule 72 (a) and (b) is as under –

“(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation, as the case may be; and (b) whether or not the said period shall be treated as a period spent on duty.”

6. As per the Rule 72 of Rules 1981, the disciplinary authority shall record its opinion that the action of the suspension was “**wholly unjustified**”. As per the Judgment of Hon’ble Apex Court in the case of **Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra & Ors. (1997) 3 SCC,636**, It is held as under –

“ Legal evidence may be insufficient to bring home the guilt beyond doubt. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts would be undermined. Every act or the conduct of a public servant should be to

effectuate the public purpose and constitutional objective. Public servant renders himself accountable to the public. If the alleged conduct is the foundation for prosecution, grant of consequential benefits with all back wages etc. cannot be as a matter of course, even if the employee may have been acquitted on appreciation or lack of sufficient evidence. It would be deleterious to the maintenance of the discipline if a person who was suspended on valid considerations is given full back wages as a matter of course, on his acquittal. The disciplinary authority has option either to enquire into the misconduct unless, the self-same conduct was subject matter of the charge and on trial the acquittal was not based on benefit of doubt but on a positive finding that the accused did not commit the offence at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty, after following the principles of natural justice.

Rule 72 gives a discretion to the disciplinary authority. The appellant is not entitled to consequential benefits on his reinstatement after acquittal. He is also not entitled to be treated as on duty from the date of suspension till the date of acquittal, for the purpose of computation of pensionary benefits etc.”

7. There is no dispute criminal proceeding is pending against the applicant. The Hon'ble Bombay High Court in the case of **Vasant Krushnaji Kamble Vs. State of Maharashtra & Ano., 2003 (4) Mh.L.J.,606** has held that “ as per rule 72 (3) (5) suspension of the employee shall be decided by the competent authority whether suspension was wholly unjustified or not”. In the cited Judgment, the appellant was acquitted in a criminal case even though it is held that acquittal by criminal court did not ipso facto entitled him to the benefits

of salary under Rule 72. What was required to be seen was whether in the opinion of the competent authority, the action of suspension of the petitioner was “wholly unjustified”. In other words, a negative test has to be applied for holding the person to be entitled to all benefits of period of suspension and that period should be treated as if the delinquent was on duty.”

8. In view of the above cited Judgment, it is for the competent authority to record its opinion as to whether the suspension was unjust or not. In this case, it appears that the suspension of the applicant was revoked subject to the decision of criminal case pending before the Court. There is no dispute that criminal case is pending before the Special Court and therefore the applicant is not entitled for the relief as prayed. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 04/07/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

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Judgment signed on : 04/07/2022.

Uploaded on : 04/07/2022.

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